

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Review of Part 87 of the Commission's Rules)	WT Docket 01-289
Concerning the Aviation Radio Service)	

REPLY COMMENTS

I. INTRODUCTION

Pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, and the *Second R&O and FNPRM*,¹ New ICO Satellite Services G.P. ("ICO") submits these reply comments in the above-captioned proceeding. ICO is one of two entities authorized to provide mobile satellite services ("MSS") in the 2000-2020 MHz and 2180-2200 MHz frequency bands (collectively, "2 GHz band").

Although ICO generally supports the Commission's efforts to update the Part 87 rules governing aviation services to facilitate broader provision of aeronautical mobile satellite (route) services ("AMS(R)S") by additional MSS systems, any revisions must consider the differences in the technical and operational requirements for the multiple MSS bands and must continue to promote flexibility for competitive MSS systems. To ensure that the Commission facilitates the provision of AMS(R)S without negatively impacting other planned services in the 2 GHz band, ICO urges the Commission to:

¹ See *Review of Part 87 of the Commission's Rules Concerning the Aviation Radio Service*, Second Report and Order and Second Further Notice of Proposed Rulemaking, 21 FCC Rcd 11582 (2006) ("*Second R&O and FNPRM*").

- clarify that only authorized 2 GHz MSS operators may provide AMS(R)S within their selected spectrum assignment under Part 87 rules that permit maximum regulatory and technical flexibility; and
- allow AMS(R)S in the 2 GHz band to operate without unnecessary Commission-mandated priority and preemptive access requirements.

II. THE COMMISSION SHOULD EXTEND TO THE 2 GHz BAND PART 87 RULES THAT WILL FACILITATE FLEXIBILITY AND INNOVATION AND THAT WILL NOT DICTATE TECHNOLOGY CHOICES

As an initial matter, the Commission should clarify that only authorized 2 GHz MSS operators may provide AMS(R)S within their selected spectrum assignment under the Part 87 rules. There should be no ambiguity regarding an authorized 2 GHz MSS operator's exclusive right to access its selected spectrum to provide MSS, including AMS(R)S.

Additionally, the Commission should not extend to AMS(R)S in the 2 GHz band the same Part 87 rules that apply to AMS(R)S in the L-band, disregarding the differences in technical and operational requirements between those frequency bands. The existing regulatory regime for AMS(R)S developed in the context of MSS operations in the L-band, in which multiple operators use frequencies on a shared basis and subject to changing frequency access pursuant to on-going treaty-based coordination negotiations. The overlay of technical requirements imposed to accommodate shared use of the L-band is reflected in domestic and international regulatory regimes governing AMS(R)S.

Extending this L-band-specific regulatory regime, however, to the 2 GHz band, which has completely different technical and operational requirements, would unduly restrict technical flexibility and innovation in the provision of AMS(R)S in the 2 GHz band. Such detailed, operator-specific requirements are not properly applied to MSS bands, like 2 GHz, where discrete frequency segments are assigned for the exclusive use

of each authorized MSS operator. Rather than impose detailed and unnecessary technical requirements on AMS(R)S operations in the 2 GHz band, the Commission should apply only those Part 87 rules that allow 2 GHz MSS providers maximum technical flexibility in providing the full range of services, including AMS(R)S.

III. THE COMMISSION SHOULD NOT APPLY INTER-SYSTEM OR INTRA-SYSTEM PRIORITY AND PREEMPTIVE ACCESS REQUIREMENTS TO THE 2 GHz BAND

No compelling reasons exist for extending to the 2 GHz band the same inter-system and intra-system priority and preemptive access requirements that now apply only to the L-band.² As other parties have noted, the Commission adopted inter-system priority and preemptive access requirements for the L-band under entirely different circumstances that are not applicable to the 2 GHz band.³ Specifically, these requirements were imposed properly in the L-band because of the existence of multiple MSS systems that must coordinate use of the spectrum pursuant to treaty-based coordination negotiations.

In contrast, 2 GHz MSS operators are entitled to exclusive access to their assigned frequencies and need not coordinate use of their spectrum with each other. Notably,

² The Commission's inter-system and intra-system priority and preemptive access requirements are set forth in Footnote US308 to the U.S. Table of Allocations, which provides as follows: "In the frequency bands 1549.5-1558.5 MHz and 1651-1660 MHz, the Aeronautical-Mobile-Satellite (R) requirements that cannot be accommodated in the 1545-1549.5 MHz, 1558.5-1559 MHz, 1646.5-1651 MHz and 1660-1660.5 MHz bands shall have priority access with real-time preemptive capability for communications in the mobile-satellite service. Systems not interoperable with the aeronautical mobile-satellite (R) service shall operate on a secondary basis. Account shall be taken of the priority of safety-related communications in the mobile-satellite service." 47 C.F.R. § 2.106, footnote US308; *see also* 47 C.F.R. § 87.187(q).

³ *See, e.g.,* Comments of the Boeing Company at 6-7 (Mar. 14, 2002); Reply Comments of Globalstar, L.P. at 4-5 (Apr. 15, 2002).

when the Commission authorized Boeing to provide AMS(R)S in the 2 GHz band, it noted that Boeing requested a waiver of Section 87.187(q), which provides priority and preemptive access rights for AMS(R)S in the L-band, but not the 2 GHz band.⁴ The Commission dismissed the waiver request on procedural grounds, but stated that “[t]o the extent Boeing seeks status superior to other 2 GHz MSS operators, any grant of such status would appear to directly contradict the Commission’s expressed intent in the [order establishing 2 GHz MSS rules].”⁵ Consequently, the Commission declared that Boeing’s authorization “shall not grant The Boeing Company any status superior to the status of other 2 GHz Mobile-Satellite Service systems.”⁶ Thus, the Commission expressly recognized that applying inter-system priority and preemptive access requirements to the 2 GHz band is unjustified and would unduly burden adjacent-band 2 GHz MSS operators.

Furthermore, subjecting 2 GHz MSS operators to intra-system priority and preemptive access requirements is unnecessary because these requirements are better addressed through other mechanisms, such as regulations by the Federal Aviation Administration and the International Civil Aviation Organization, international standards or regulations, and contractual arrangements. Imposing Commission-mandated intra-system priority and preemptive access requirements would place an undue burden on 2 GHz MSS operators by subjecting them to potentially conflicting regulations and technical requirements.

⁴ *The Boeing Company*, 16 FCC Rcd 13691, ¶ 39 (Int’l Bur. 2001).

⁵ *Id.*

⁶ *Id.* ¶ 44.

IV. CONCLUSION

Based upon the foregoing, ICO urges the Commission to adopt Part 87 rules that facilitate the provision of AMS(R)S in the 2 GHz band without unnecessary or burdensome regulations, such as priority and preemptive access requirements.

Respectfully submitted,

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April 5, 2007